

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4215 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 : NO

TRIKAMLAL S KACHHIYA

Versus

DIVISIONAL CONTROLLER

Appearance:

MR GI DESAI for Petitioner

MR SN SHELAT for Respondent No. 1

CORAM : MR.JUSTICE R.A.MEHTA

Date of decision: 20/03/98

ORAL JUDGEMENT

The petitioner who is granted reinstatement, wants backwages.

2. Petitioner, ST Driver, was involved in an accident whereby his Bus mounted on the footpath causing

damage to Scooter and killed a pedestrian. He was acquitted in the Criminal Court but in the Departmental proceedings, he was dismissed. Therefore, he raised a dispute before the Labour Court. The Labour Court held that the inquiry was not proper and on the evidence led before it, the Labour Court felt that the negligence of Driver was not proved, and therefore, the Labour Court granted reinstatement. However, no backwages have been awarded. Petitioner claims full backwages stating that when there is no negligence and there is an order for reinstatement, backwages should follow.

2. However, in this case, it is impossible to agree with the arguments of the learned counsel for petitioner that there was no negligence on the part of petitioner. Petitioner was driving a Bus. Unless, it was in great speed, it could not have climbed over footpath resulting into damage to a Scooter and seriously injuring pedestrian. In the Motor Vehicles Accident Claim case, State Transport Corporation had to pay compensation on finding of negligence of the Driver.

3. The defence of the Driver that the break had suddenly failed has no justification. The evidence of the Mechanical Engineer of ST shows that ordinarily such thing would not occur without any negligence. On account of accident, many parts of the Bus were damaged and broken and it cannot be assumed that there is no negligence on the part of Driver. Even if break fails, there is a hand brake and by switching off the engine & the accelerator, the gear would act as a brake. A seasoned driver of State Transport Corporation has not taken care to apply either the hand brake or had switched off the accelerator. The finding of "no negligence and no misconduct" on the part of Driver arrived at by the Labour Court is not justified. However, there is no cross petition against the order of reinstatement, and therefore, denial of backwages is a proper order of the Labour Court, in respect of which no interference is called for. Hence, this petition is dismissed. Rule discharged with no order as to costs.

Prakash*